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Testimony  
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CONTRACT  
MANAGEMENT

Comments on Proposed  
Services Acquisition Reform  
Act

Statement of William T. Woods, Director  
Acquisition and Sourcing Management



G A O

Accountability \* Integrity \* Reliability

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Mr. Chairman and Members of the Committee:

Thank you for inviting the General Accounting Office (GAO) to participate in today's hearing on the proposed Services Acquisition Reform Act of 2003 (SARA). Over the past several years, the federal acquisition environment has changed dramatically. Spending for services has increased significantly and now represents more than 60 percent of all federal contract spending. At the same time, there has been a reduction in the size of the acquisition workforce, and the use of alternative contracting approaches has been growing. The purpose of SARA is to provide federal agencies with additional tools for addressing these developments. We fully support this objective, and look forward to continuing to work with this Committee and others in finding ways to promote more efficient and effective acquisitions.

In my testimony today, I will:

- ☐ Summarize recent trends in contract spending and in the acquisition workforce, and
- ☐ Discuss our views on selected provisions of SARA based on relevant GAO reports.

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## Contract Spending and Workforce Trends

We recently issued several reports on acquisition spending and workforce trends. These reports show that spending on services acquisitions is increasing at a time when the acquisition workforce is decreasing.

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### Spending Trends

Our report on spending and workforce trends in federal procurement<sup>1</sup> shows that federal agencies continue to buy far more services than goods. Since 1997, spending on services has grown 11 percent. In fiscal year 2001, over 60 percent of the more than \$220 billion in goods and services purchased by the federal government was for services.<sup>2</sup> At six agencies, procurement of services exceeded 75 percent of their total spending on contracts; at one agency, the Department of

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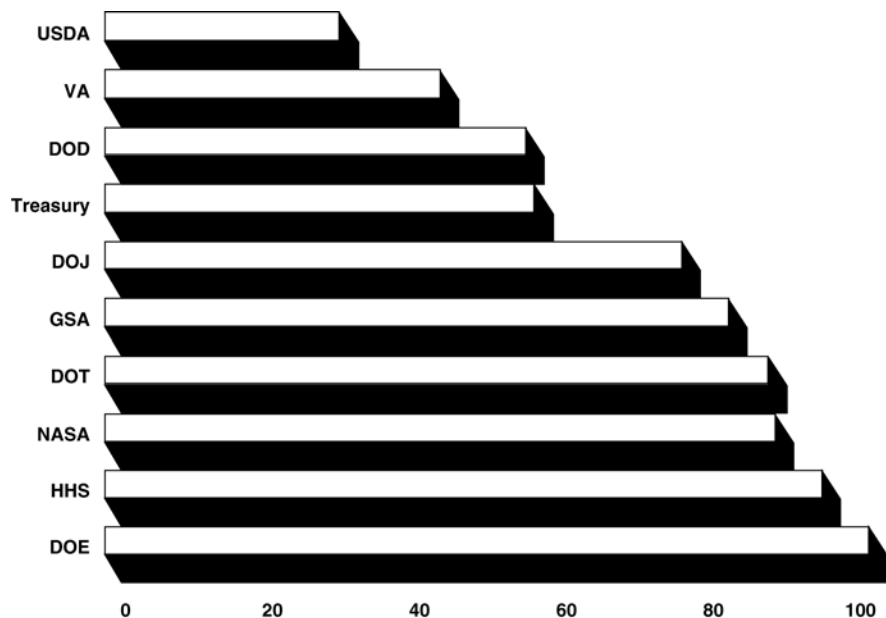
<sup>1</sup> *Federal Procurement: Spending and Workforce Trends*, [GAO-03-443](#) (Washington, D.C.: Apr. 30, 2003).

<sup>2</sup> Federal agencies spent about \$140 billion on services and about \$81 billion on goods for contracts valued at more than \$25,000. The Federal Procurement Data System does not provide similar information for contracts valued at \$25,000 or less. However, the combined total of purchases of goods and services for fiscal year 2001 was more than \$235 billion.

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Energy, nearly 100 percent of total spending via contracts was for services (see fig. 1).

**Figure 1: Percent of Contract Dollars Spent on Services in Fiscal Year 2001**



Sources: FPDS and FAA.

Spending on services could increase even further, at least in the short term, given the President's recent request for additional funds for defense and homeland security. The degree to which individual agencies are currently contracting for services and the growth of services spending underscore the importance of ensuring that service acquisitions are managed properly.

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## Workforce Challenges

Industry and government experts alike recognize that the key to a successful transformation toward a more effective acquisition system is having the right people with the right skills. To increase the efficiency and effectiveness of acquiring goods and services, the government is relying more on judgment and initiative versus rigid rules to make purchasing decisions.

Agencies have to address governmentwide reductions in the acquisition workforce. At the same time, government contract actions exceeding \$25,000 have increased significantly—by 26 percent between fiscal years 1997 and 2001 (see table 1).

**Table 1: Federal Acquisition Personnel and Workload**

Agency	Acquisition workforce		Changes in contract actions, fiscal years 1997 through 2001		
	Total Sept. 2001	Percent change in workforce since fiscal year 1997	Change in total contract actions (percent)	Change in contract actions exceeding \$25,000 (percent)	Change in contract actions under \$25,000 (percent)
Governmentwide	103,053	-5	-6	26	-7
DOD	68,513	-9	5	27	4
USDA	5,703	-6	-79	25	-81
DOE	1,449	10	4	19	-3
GSA	2,743	11	-75	68	-82
HHS	2,490	9	-29	44	-31
DOJ	1,457	-2	-11	26	-13
NASA	1,246	-4	-38	-12	-50
DOT	1,514	-7	-37	27	-48
Treasury	2,561	8	12	15	11
VA	2,562	-6	29	-12	30

Sources: OPM, FPDS, and FAA.

Over the past year, GAO issued four reports on the management and training of the government's acquisition workforce.<sup>3</sup> While the agencies<sup>4</sup> we reviewed are taking steps to address their future acquisition workforce needs, each is encountering challenges in their efforts. In particular, shifting priorities, missions, and budgets have made it difficult for agencies to predict, with certainty, the specific skills and competencies the acquisition workforce may need.

Training is critical in ensuring that the acquisition workforce has the right skills. To deliver training effectively, leading organizations typically prioritize and set requirements for those in need of training to ensure their training reaches the

<sup>3</sup> *Acquisition Workforce: Department of Defense's Plans to Address Workforce Size and Structure Challenges*, [GAO-02-630](#) (Washington, D.C.: Apr. 30, 2002); *Acquisition Workforce: Status of Agency Efforts to Address Future Needs*, [GAO-03-55](#) (Washington, D.C.: Dec. 18, 2002); *Acquisition Workforce: Agencies Need to Better Define and Track the Training of Their Employees*, [GAO-02-737](#) (Washington, D.C.: Jul. 29, 2002); and *Acquisition Management: Agencies Can Improve Training on New Initiatives*, [GAO-03-281](#) (Washington, D.C.: Jan. 15, 2003).

<sup>4</sup> Department of Defense (DOD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), the Department of Energy (DOE), the Department of Veterans Affairs (VA), the Department of the Treasury, and the Department of Health and Human Services (HHS).

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right people. Agencies we reviewed<sup>5</sup> had developed specific training requirements for their acquisition workforce and had efforts underway to make training available and raise awareness of major acquisition initiatives. However, they did not have processes for ensuring that training reaches all those who need it. And while agencies had also developed a variety of systems to track the training of their personnel, they experienced difficulties with these systems.

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## GAO Work Related to SARA

We have issued a number of reports on key provisions of SARA. These reports address the areas of acquisition leadership, workforce, contract innovations, as well as other proposals.

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### Leadership

#### Section 201: Chief Acquisition Officer

Our discussions with officials from leading companies, which we reported on last year,<sup>6</sup> indicate that a procurement executive or Chief Acquisition Officer plays a critical role in changing an organization's culture and practices. In response to many of the same challenges faced by the federal government—such as a lack of tools to ensure they receive the best value over time—each of the companies we studied changed how they acquired services in significant ways. For example, each elevated or expanded the role of the company's procurement organization; designated "commodity" managers to oversee key services; and/or made extensive use of cross-functional teams. Taking a strategic approach paid off. One official, for example, estimated that his company saved over \$210 million over a recent 5-year period by pursuing a more strategic approach.

Bringing about these new ways of doing business, however, was challenging. To overcome these challenges, the companies found they needed to have sustained commitment from their senior leadership—first, to provide the initial impetus to change, and second, to keep up the momentum.

Section 201 of SARA would create a Chief Acquisition Officer (CAO) within each civilian executive agency. We support this provision. By granting the CAO

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<sup>5</sup> The agencies we reviewed for the two reports on training included Department of Defense (DOD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), the Department of Energy (DOE), the Department of Veterans Affairs (VA), Department of the Treasury, the Department of Health and Human Services (HHS) and the Federal Aviation Administration (FAA).

<sup>6</sup> *Best Practices: Taking a Strategic Approach Could Improve DOD's Acquisition of Services*, GAO-02-230 (Washington, D.C.: Jan. 18, 2002).

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clear lines of authority, accountability, and responsibility for acquisition decision-making, SARA takes a similar approach as leading companies in terms of the responsibility and decision-making authority of these individuals.

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## Acquisition Workforce

### Section 103: Government-Industry Exchange Program

Comptroller General David Walker testified earlier this month<sup>7</sup> that strategic human capital management must be the centerpiece of any serious government transformation effort and that federal workers can be an important part of the solution to the overall transformation effort. In July 2001,<sup>8</sup> he recommended that Congress explore greater flexibilities to allow federal agencies to enhance their skills mix by leveraging the expertise of private sector employees through innovative fellowship programs.

The acquisition professional exchange program proposed in section 103 of SARA could enhance the ability of federal workers to successfully transform the way the federal government acquires services. The program, which is modeled after the Information Technology Exchange Program included in the recently passed E-Government Act of 2002,<sup>9</sup> would permit the temporary exchange of high-performing acquisition professionals between the federal government and participating private-sector entities.

We support this provision, which begins to address a key question we face in the federal government: Do we have today, or will we have tomorrow, the ability to manage the procurement of the increasingly sophisticated services the government needs? Following a decade of downsizing and curtailed investments in human capital, federal agencies currently face skills, knowledge, and experience imbalances that, without corrective action, will worsen. The program established by section 103 would allow federal agencies to gain from the knowledge and expertise of private-sector professionals and entities.

### Section 102: Acquisition Workforce Training Fund

Section 102 of SARA would establish an acquisition workforce training fund using five percent of the fees generated by governmentwide contract programs. We recently completed a review of fees charged on governmentwide contracts—

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<sup>7</sup> *Human Capital: Building on the Current Momentum to Address High-Risk Issues*, [GAO-03-637T](#) (Washington, D.C.: Apr. 8, 2003).

<sup>8</sup> *Human Capital: Building the Information Technology Workforce to Achieve Results*, [GAO-01-1007T](#) (Washington, D.C.: July 31, 2001).

<sup>9</sup> Public Law 107-347, Section 209.

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covering all five designated executive agencies for governmentwide acquisition contracts and the General Services Administration's Schedules program.<sup>10</sup> The Office of Management and Budget's guidance directs agencies operating governmentwide information technology contracts to transfer fees in excess of costs to the miscellaneous receipts account of the U.S. Treasury's General Fund. Further, some of these contracts operate under revolving fund statutes that limit the use of fees to the authorized purposes of the funds.

Quality training is important, and we recognize the need for adequate funds for training. In our view, however, the procuring agencies should ensure that adequate funding is available through the normal budgeting process to provide the training the acquisition workforce needs. We are concerned about relying on contract program fees—which can vary from year to year and which are intended to cover other requirements—as a source of funding for such an important priority as workforce training.

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## Innovative Contracting

Several sections of SARA would encourage the use of innovative contract types that could provide savings to the government. For example, performance-based contracts can offer significant benefits, such as encouraging contractors to find cost-effective ways of delivering services. Share-in-savings contracting, one type of performance-based contracting, is an agreement in which a client compensates a contractor from the financial benefits derived as a result of the contract performance.

### Section 301: Share-in-Savings Initiatives

Share-in-savings contracting can motivate contractors to generate savings and revenues for their clients. We issued a report earlier this year in response to your request that we determine how the commercial sector uses share-in-savings contracting.<sup>11</sup> We examined four commercial share-in-savings contracts and identified common characteristics that made them successful.

In the commercial share-in-savings contracts we reviewed, we found four conditions that facilitated success:

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<sup>10</sup> *Contract Management: Interagency Contract Program Fees Need More Oversight*, [GAO-02-734](#) (Washington, D.C.: July 25, 2002). Our review showed that in some years contract fees exceeded costs and in others the fees fell short of covering the costs incurred. From fiscal year 1999 to 2001, the revenue generated by the GSA's Schedules program fees exceeded program costs by over 50 percent. We recommended that the fee be adjusted. Based on our recommendation, GSA initiated action toward a 25-percent reduction in the fee it charges for using the Schedules program.

<sup>11</sup> *Contract Management: Commercial Use of Share-in-Savings Contracting*, [GAO-03-327](#) (Washington, D.C.: Jan. 31, 2003).

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- **An expected outcome is clearly specified.** By outcomes, we mean such things as generating savings by eliminating inefficient business practices or identifying new revenue centers. It is critical that a client and contractor have a clear understanding of what they are trying to achieve.
  - **Incentives are defined.** Both the client and contractor need to strike a balance between the level of risk and reward they are willing to pursue.
  - **Performance measures are established.** By its nature, share-in-savings cannot work without having a baseline and good performance measures to gauge exactly what savings or revenues are being achieved. Agreement must be reached on how metrics are linked to contractor intervention.
  - **Top management commitment is secured.** A client's top executives need to provide contractors with the authority needed to carry out solutions, since change from the outside is often met with resistance. They also need to help sustain a partnership over time since relationships between the contractor and client can be tested in the face of changing market conditions and other barriers.

The companies in our study found that successful arrangements have generated savings and revenues. In one case highlighted in our report, \$980,000 was realized in annual energy savings.

We have not found share-in-savings contracting to be widespread in the commercial sector or the federal government. Excluding the energy industry, we found limited references to companies or state agencies that use or have used the share-in-savings concept. In addition, there are few documented examples of share-in-savings contracting in the federal government. Officials in federal agencies we spoke with noted that such arrangements may be difficult to pursue given potential resistance and the lack of good baseline performance data. In addition, in previous work,<sup>12</sup> Department of Energy headquarters officials told us they believe such contracts can be best used when federal funding is unavailable.

To achieve the potential benefits from the use of share-in-savings contracting, it may be worthwhile to examine ways to overcome potential issues. For example, in a letter to the Office of Federal Procurement Policy in March of this year,<sup>13</sup> we

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<sup>12</sup> *Energy Conservation: Contractor's Efforts at Federally Owned Sites*, [GAO/RCED-94-96](#) (Washington, D.C.: Apr. 29, 1994).

<sup>13</sup> *Contract Management: OFPP Policy Regarding Share-in-Savings Contracting Pursuant to the E-Government Act of 2002*, [GAO-03-552R](#) (Washington, D.C.: Mar. 24, 2003).



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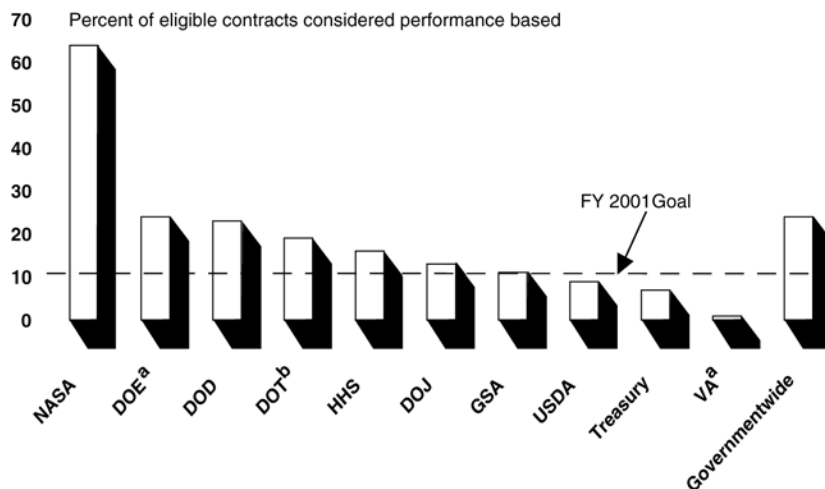
recognized that share-in-savings contracting represents a significant change in the way the federal government acquires services. To address this challenge, we underscored the need for the Office of Federal Procurement Policy to develop guidance and policies that could ensure that (1) appropriate data are collected and available to meet mandated reporting requirements regarding the effective use of share-in-savings contracting, and (2) members of the federal acquisition workforce understand and appropriately apply this new authority.

Section 401: Additional Incentives  
for Use of Performance-Based  
Contracting for Services

Section 401 authorizes agencies to treat a contract or task order as being for a commercial item if it is performance-based—that is, it describes each task in measurable, mission-related terms, and identifies the specific outputs—and the contractor provides similar services and terms to the public. This provision, which would only apply if the contract or task order were valued at \$5 million or less, would provide another tool to promote greater use of performance-based contracting.

Our spending and workforce trends report shows that in fiscal year 2001, agencies reported that 24 percent of their eligible service contracts, by dollar value, were performance-based. However, there was wide variation in the extent to which agencies used performance-based contracts. As figure 2 shows, 3 of the 10 agencies in our review fell short of the Office of Management and Budget’s goal that 10 percent of eligible service contracts be performance-based.

**Figure 2: Percentage of Eligible Contracts Considered Performance Based**



Source: FPDS.

<sup>a</sup> DOE and VA officials stated that their internal data systems report a higher use of performance-based contracting in fiscal year 2001 than the data in FPDS. For example, DOE officials believed 77 percent of their eligible contracts were performance based, while VA officials believed their agency's figure should be about 11 percent.

<sup>b</sup> Figure reflects data for DOT only; FAA could not provide performance-based service contracting data because it was not an integral part of its management information systems.

In our September 2002 report,<sup>14</sup> we recommended that the Administrator of the Office of Federal Procurement Policy clarify existing guidance to ensure that performance-based contracting is appropriately used, particularly when acquiring more unique and complex services that require strong government oversight. If section 401 is enacted, we believe that clear guidance will be needed to ensure effective implementation. The Office of Federal Procurement Policy might be assisted in developing and updating meaningful guidance by establishing a center for excellence to identify best practices in service contracting, as required by section 401. A center for excellence may help federal agencies learn about successful ways to implement performance-based contracting.

#### Section 501: Authority to Enter Into Certain Procurement-Related Transactions and to Carry Out Certain Prototype Projects

Section 501 would authorize those civilian agencies approved by the Office of Management and Budget to use so-called "other transactions" for projects related to defense against or recovery from terrorism, or nuclear, biological, chemical, or radiological attacks. Other transactions are agreements that are not contracts,

<sup>14</sup> *Contract Management: Guidance Needed for Using Performance-Based Service Contracting*, GAO-02-1049 (Washington, D.C.: Sept., 23, 2002).

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grants, or cooperative agreements. This authority would be similar to that currently available to the Departments of Homeland Security and Defense.

Because statutes that apply only to procurement contracts do not apply to other transactions, this authority may be useful to agencies in attracting firms that traditionally decline to do business with the government. In fact, our work shows that the Department of Defense has had some success in using other transactions to attract nontraditional firms to do business with the government. Our work also has shown, however, that there is a critical need for guidance on when and how other transactions may best be used. The guidance developed by the Department of Defense may prove helpful to other agencies should the Congress decide to expand the availability of other transaction authority.

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## Additional Comments on SARA Proposals

### Section 211: Ensuring Efficient Payment

Section 211 provides for a streamlined payment process under which service contractors could submit invoices for payment on a biweekly or a monthly basis. Biweekly invoices would be required to be submitted electronically.

While we support the intent of this proposal—to make payments to government contractors more timely—implementation of this provision could result in increased improper payments and stress already weak systems and related internal controls. Agency efforts to address improper payment problems have been hampered by high payment volume, speed of service, inadequate payment systems and processes, internal control weaknesses, and downsizing in the acquisition and financial management community. Until federal agencies make significant progress in eliminating their payment problems, requirements to accelerate service contract payments would likely increase the risk of payment errors, backlogs, and late payment interest.

### Section 213: Agency Acquisition Protests

Section 213 would provide for agency-level protests of acquisition decisions alleged to violate law or regulation. An agency would have 20 working days to issue a decision on a protest, during which time the agency would be barred from awarding a contract or continuing with performance if a contract already had been awarded. If an agency-level protest were denied, a subsequent protest to GAO that raised the same grounds and was filed within 5 days would trigger a further stay pending resolution of that protest.

We believe that a protest process that is effective, expeditious, and independent serves the interests of all those involved in or affected by the procurement

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system. Section 213 appears to address each of these criteria. First, although protests currently may be filed with the procuring agencies, section 213 would provide for a more effective agency-level protest process by requiring that an agency suspend, or “stay,” the procurement until the protest is resolved. Second, the process would be relatively expeditious because decisions would be required within 20 working days. Having an expeditious process at the agency is especially important because section 213 would provide for a stay both during the agency-level protest and then during any subsequent GAO protest. It should be noted, though, that 20 working days may not be adequate for a thorough review, particularly in complex procurements. Finally, requiring protests to be decided by the head of the agency may help to mitigate longstanding concerns about a perceived lack of independence when decisions on agency-level protests are issued by officials closely connected with the decision being protested.

#### Section 402: Authorization of Additional Commercial Contract Types

Section 402 would provide for a change to the Federal Acquisition Regulation to include the use of time-and-materials and labor-hour contracts for commercial services commonly sold to the general public. This change would make it clear that such contracts are specifically authorized for commercial services.

The Federal Acquisition Regulation states that a time-and-materials contract may be used only when it is not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Therefore, adequate surveillance is required to give reasonable assurance that the contractor is using efficient methods and effective cost controls.

#### Section 404: Designation of Commercial Business Entities

Section 404 would designate as a commercial item any product or service sold by a commercial entity that over the past 3 years made 90 percent of its sales to private sector entities. We are concerned that the provision allows for products or services that had never been sold or offered for sale in the commercial marketplace to be considered a commercial item. In such cases, the government may not be able to rely on the assurances of the marketplace in terms of the quality and pricing of the product or service.

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## Conclusion

The growth in spending on service contracts, combined with decreases in the acquisition workforce and an increase in the number of high-dollar procurement actions, create a challenging acquisition environment. It is important that agencies have the authorities and tools they need to maximize their performance in this new environment. The initiatives contained in SARA address a number of longstanding issues in contracting for services, and should enable agencies to improve their performance in this area.

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Mr. Chairman, this concludes my statement. I will be happy to answer any questions you may have.

**Contact and Acknowledgments**

For further information, please contact William T. Woods at (202) 512-4841. Individuals making key contributions to this testimony include Blake Ainsworth, Christina Cromley, Timothy DiNapoli, Gayle Fischer, Paul Greeley, Oscar Mardis, and Karen Sloan.